

CIVIL SERVICE COMMISSION MINUTES

June 16, 1999

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 310 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gloria Valencia-Cothran
Roy Dixon
Mary Gwen Brummitt
Gordon Austin
Sigrid Pate

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Joy Kutzke, Reporting

CIVIL SERVICE COMMISSION MINUTES
June 16, 1999

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

Discussion Items

5,16,17,18,19,34

COMMENTS Motion by Brummitt to approve all items not held for discussion; seconded by Dixon. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Pate: James Gattey, Esq. on behalf of **Sue Riley** appealing an Order of Termination from the Sheriff's Department.

B. Commissioner Austin: James Gattey, Esq. on behalf of **Manuel Perez** appealing an Order of Suspension from the Sheriff's Department.

MINUTES

1. Approval of the Minutes of the regular meeting of May 5, 1999.

Approved.

CONFIRMATION OF ASSIGNMENTS/REASSIGNMENTS

2. Commissioner Dixon as hearing officer in the appeal of **Michael R. Wilbert** from an Order of Termination from the Sheriff's Department.

Confirmed.

3. Commissioner Pate as hearing officer in the appeal of **Glendel D. Galloway** from an Order of Suspension from the Department of Animal Control.

Confirmed.

4. Commissioner Valencia-Cothran as hearing officer in the appeal of **Suzanne Campbell-Adams** from an Order of Termination from the Sheriff's Department.

Confirmed.

5. Everett Bobbitt, Esq. requesting a Rule VII hearing on behalf of **Benjamin Bensoul, M.D.**, a former employee of the Health and Human Services Agency (HHSa).

RECOMMENDATION: Deny request.

Richard Pinckard, Esq., on behalf of his client, **Dr. Benjamin Bensoul**, requested an amendment of Dr. Bensoul's appeal to include a request for an investigation under Rule XI or other appropriate provision relating to the circumstances of his termination/layoff. Anthony Albers, Deputy Counsel, responded on behalf of HHSa that the Commission should deny the request for a Rule VII hearing and that it should not consider the request to amend at this time. It is his position that should a complainant/appellant desire to amend an original request, it should be done in writing with time given to the County department to respond to the Commission. Mr. Albers asserted that it is a requirement of the party requesting assistance to specify which rules are at issue. Larry Cook, Executive Officer, stated that it is within the Commission's authority to receive verbal amendments at Commission meetings. He concurred with Mr. Albers that it is the responsibility of the party(ies) to request relief under a specific rule. Regarding Mr. Pinckard's requests, Mr. Cook recommends denial of the Rules VII and XI requests for hearing and investigation, respectively.

Motion by Brummitt to deny request for Rule VII hearing and Rule XI investigation; seconded by Dixon. Carried.

6. Everett Bobbitt, Esq. requesting a Rule VII hearing on behalf of **Sergeant Larry Staley** regarding his removal from the Transportation Division by the Sheriff's Department.

RECOMMENDATION: Assign a Commissioner to conduct a prehearing conference to determine if the reassignment of Sgt. Staley was a form of discipline.

Staff recommendation approved. Commissioner Brummitt assigned as hearing officer.

WITHDRAWALS

7. Commissioner Dixon: **Patricia McElhaney** appealing an Order of Removal from the Department of Planning and Land Use. The Order of Termination was rescinded.

Withdrawn.

8. Commissioner Pate: Edward Peckham, Esq., on behalf of **Indira Avadahni** appealing an Order of Termination from the Probation Department. The Order of Termination was rescinded.

Withdrawn.

DISCIPLINARY FINDINGS

9. Commissioner Pate: James Gattey, Esq. on behalf of **Sue Riley** appealing an Order of Termination from the Sheriff's Department.

FINDINGS AND RECOMMENDATION:

Employee was charged with Cause I - inefficiency (failure to properly and timely dispatch a domestic violence call); and Cause II - acts which are incompatible with and/or inimical to the public service. Employee was employed in the Sheriff's Department Communications Center since September 1994. During that time she had been promoted, demoted and otherwise disciplined. A domestic violence call was received by a Communications Center operator and forwarded to Employee for proper dispatching. Employee failed to properly and timely process the call. It is concluded that Employee is guilty of Causes I and II. It is therefore recommended that the Order of Termination and Charges be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Pate to approve Findings and Recommendations; seconded by Austin. Carried.

10. Commissioner Austin: James Gattey, Esq. on behalf of **Manuel Perez** appealing an Order of Suspension from the Sheriff's Department.

FINDINGS AND RECOMMENDATION:

Employee was charged with Cause I - inefficiency (failure to wear soft body armor [bulletproof vest]); and Cause II - acts which are incompatible with and/or inimical to the public service. Employee has been employed by the Sheriff's Department for approximately 30 years. He has received three prior disciplines recently. Employee admits not wearing his bulletproof vest on three separate occasions in a three-week period of time, but asserts that the level of discipline is excessive. Employee failed to provide sufficient facts or reasons at the hearing to cause the hearing officer to reduce the level of discipline imposed by the Department. It is concluded that Employee is guilty of Causes I and II. It is therefore recommended that the Order of Pay Step Reduction and Charges (equivalent to a five [5] working-day suspension [42.5 hours]) be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Dixon. Carried.

SELECTION PROCESS FINDINGS/COMPLAINTS

Findings

11. **Makito Okawa** appeal of removal of his name by DHR from the employment list for Field Services Officer.
12. **Christopher J. Reyes** appeal of removal of his name by DHR from the employment list for Correctional Deputy Probation Officer.
13. **Darryl Kane** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.
14. **Tin V. Bach** appeal of removal of his name by DHR from the employment list for Correctional Deputy Probation Officer.
15. **Gary Rogers** appeal of removal of his name by DHR from the employment list for Correctional Deputy Probation Officer.

RECOMMENDATION: Ratify item Nos. 11 through 15. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 11 through 15 ratified.

16. Commissioner Valencia-Cothran: Robert A. McLaughlin, Esq., on behalf of **Arlesia Wilkins** and **Linda Clement** - Supplemental Decision in Compliance with Fourth District Court of Appeal Order regarding previous appeals/complaints alleging discrimination by the Sheriff's Department and Rule X complaints challenging the selection process for the Promotional Examination for Detention Processing Supervisor.

RECOMMENDATION: Reopen Rule X hearing.

Tom Reed, on behalf of the Sheriff's Department, sought clarification as to the issues that would be the subject of discussion if the hearing was reopened. He addressed concerns regarding new remedies sought by appellants being addressed at the reopened hearing. Attorney Kenneth Smigelski addressed the Commission on behalf of Arlesia Wilkins and Linda Clement taking the position that the Court remanded the case to the Commission for a determination of the proper remedies to be rendered, including taking into consideration the newly proposed remedies. Larry Cook, Executive Officer, commented that a hearing environment is the most conducive arena in which to address the issues which were remanded by the Court. The Commission would ascertain whether its previous findings and remedies were relevant solely to the selection process issues and not interwoven with the discrimination issues, which the Court reversed on appeal. He clarified that the scope of the review/hearing would be narrowed to the Court's order pertaining to the appropriateness of the remedies of the Commission's November 1, 1995 Decision as well as appellants' requests for new remedies. Ralph Shadwell, Deputy County Counsel, concurred with Mr. Cook's interpretation of the Court's direction to the Commission.

Motion by Austin to reopen the hearing and approve Commissioner Valencia-Cothran as hearing officer; seconded by Dixon. Carried.

Complaints

17. **Mandana B. Beheshti** applicant, appealing the removal of her name from the Drafting Technician II employment list by the Department of Human Resources.

RECOMMENDATION: Deny request.

Morteza Beheshti addressed the Commission on behalf of his wife, Mandana Beheshti, regarding the removal of Ms. Beheshti's name from the Drafting Technician II employment list as the result of positive findings of a preemployment drug test. It is Ms. Beheshti's contention that she inadvertently ingested an herb while at a cultural celebration which resulted in a positive drug test result. She provided the Commission with a professional expert opinion revealing the possibility of ingesting foods containing cannabinoids resulting in a positive drug test finding. Charles Nares represented the Department of Human Resources indicating that the County's policy states that positive results of drug testing render an applicant ineligible for County employment. Larry Cook, Executive Officer, explained that Ms. Beheshti's credibility is not at issue. The issue is adherence to the County's zero tolerance policy and its effectiveness. There was discussion by the Commission addressing various concerns surrounding Ms. Beheshti's issues.

Motion by Dixon to grant a hearing; seconded by Austin. Carried. Commissioners Valencia-Cothran and Brummitt - No. Commissioner Austin assigned as hearing officer.

INVESTIGATIONS

18. **Joyce Eisen**, R.N., requesting an investigation concerning the manner in which she was laid off from her classification as Chief Nurse by the Health and Human Services Agency (HHSA).

RECOMMENDATION: Deny request.

Ms. Eisen alleged procedural errors by HHSA and the Department of Human Resources (DHR) resulting in her layoff. She maintained that her position was one that could not have been affected by suborganizational layoff. She moved to amend her original complaint and add a request for a Rule VI, discrimination investigation. Anthony Albers, Deputy County Counsel, addressed the Commission on behalf of HHSA explaining the manner in which the suborganizational layoff was conducted by the Agency. He also expressed his concerns regarding Ms. Eisen's request to amend her original complaint. Melody Kessler, on behalf of HHSA, addressed the Commission clarifying the budgetary aspects of the layoff as well as other employment options presented to Ms. Eisen. Dr. Benjamin Bensoul,

former Acting Supervising Psychiatrist of HHSA, addressed the Commission stating that Ms. Eisen was never part of a suborganization. Larry Cook, Executive Officer, addressed time constraints involved in Ms. Eisen's request for a discrimination review. Mr. Shadwell offered advice regarding the Commission's authority to investigate under Rule XI as it related to the suborganizational layoff allegations brought by Ms. Eisen as well as the Commission's acceptance of Ms. Eisen's verbal request for a Rule VI investigation.

Motion by Austin to grant a Rule XI investigation concerning all aspects of Ms. Eisen's layoff; seconded by Pate. Carried. Commissioner Dixon assigned as hearing officer.

LIBERTY INTEREST

19. **Barbara Trigueros**, former Legal Assistant I in the Public Defender's Office, requesting a Liberty Interest hearing.

RECOMMENDATION: Deny request.

Barbara Trigueros spoke to the Commission regarding her separation during probation by the Public Defender alleging lack of due process and other procedural flaws. Henry Coker, on behalf of the Department, expressed that Ms. Trigueros was failed on probation due to the lack of skill level necessary in order to perform the functions for which she was hired. Ralph Shadwell, Deputy County Counsel, clarified violations of "liberty interest" which are within the Commission's jurisdiction. Larry Cook, explained various processes as they relate to the dismissal of employees while on probation and the reasons therefore. Blair Provo, on behalf of DHR, offered an explanation as to the impact a failure on probation may have on future County employment and that such issues are handled on a case-by-case basis.

Motion by Pate to approve staff recommendation; seconded by Austin. Carried.

OTHER MATTERS

Seal Performance Appraisals

20. **Marc Morales**, Equipment Operator, and John L. Snyder, Director (Acting), Department of Public Works, requesting the sealing of Mr. Morales' performance appraisal for the period July 5, 1996 through October 5, 1996.

RECOMMENDATION: Grant request.

Staff recommendation approved.

21. **JoeAnn Groomes**, Health and Human Services Agency, requesting the sealing of her performance appraisal for the period December 5, 1997 through December 5, 1998.

RECOMMENDATION: Grant request.

Staff recommendation approved.

22. Leslie Curtis, representative, S.E.I.U. Local 2028 on behalf of **Kenneth Wayne Loud**, Health and Human Services Agency, requesting the sealing of his performance appraisal for the period February 4, 1998 to February 17, 1999.

RECOMMENDATION: Grant request.

Staff recommendation approved.

Extension of Temporary Appointments

23. County Library

1 Library Technician III (Kay Diane Quinn)

24. Human Resources

1 Departmental Computer Specialist I (David Arellano)

25. Health and Human Services Agency

2 Residential Care Worker IIs (Silvia Williamson, Esther Jamila)

26. Agriculture, Weights & Measures

A. 2 Insect Detention Specialist Is (Robert Delaval and Mark Martinez)

B. 4 Agricultural/Standards Inspectors (Jorge Olivares, Katherine Dobbins, Greg Terhall, Abdel Amador)

27. Sheriff

1 Corrections Sergeant (William Brown)

28. Land Use & Environmental Group

1 Departmental Computer Specialist III (Martha Ruth Galvan)

29. Public Works

A. 1 Road Maintenance Worker (Paul Rockwell)

B. 1 Storekeeper I (Sheila Hamilton)

30. Alternate Public Defender

A. 1 Public Defender Investigator I (Karen Murray)

B. 2 Graduate Attorneys (Enriqueta Rico, Melinda Willits-Sanchez)

31. Department of Information Services

1 Departmental Computer Specialist I (Ernest Solomon)

32. Assessor/Recorder/Clerk

1 Drafting Technician (Lawrence J. Martin)

RECOMMENDATION: Ratify item Nos. 23 through 32.

Item Nos. 23 through 32 ratified.

33. Civil Service Commission Employee Recognition and Awards Program policy.

RECOMMENDATION: Approve policy.

Staff recommendation approved.

34. Bollinger v. San Diego (City) Civil Service Commission -- litigation regarding Brown Act and related matters.

RECOMMENDATION: Allow County Counsel, Executive Officer and others to give verbal input.

Larry Cook, Executive Officer, recommended that: (1) the Commission accept staff's report reflecting that the Commission no longer send notices to appellants informing them that they have the option to have their matters discussed in closed and open session or only in open session. He suggested that the Commission give no notice and revert to its former practice of discussing all relevant matters in closed session and subsequently open session prior to voting; and (2) the Commission retain its policy and practice of not giving out draft reports prior to discussion and rendering decisions at public meetings.

Motion by Dixon to approve Executive Officer's recommendation; seconded by Austin. Carried.

35. Public Input.

ADJOURNMENT: 4:50 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE JULY 21, 1999.